

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2103**

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**Introduced by Assembly Member Burke**

February 17, 2016

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An act to amend Section ~~827 of the Welfare and Institutions~~ 49077 of the Education Code, relating to ~~juveniles; pupil records~~.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2103, as amended, Burke. ~~Juveniles; case file inspection. Pupil records; court orders; disclosure exceptions.~~

*(1) Existing law requires information concerning a student to be furnished in compliance with a court order or a lawfully issued subpoena. Existing law requires a school district to make a reasonable effort to notify the parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.*

*This bill would, consistent with federal law, instead require an educational agency or institution to make that disclosure but would exempt an educational agency or institution from that requirement if the disclosure is made in compliance with (A) a subpoena issued by a grand jury and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed or (B) any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed. To the extent the bill*

would impose additional duties on county offices of education or charter schools, the bill would impose a state-mandated program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires the case file of a dependent child or ward of the juvenile court to be kept confidential, except as specified. Existing law authorizes only certain persons to inspect the case file, including, among others, the attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers, who are actively participating in proceedings involving the child.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. (a) The Legislature finds and declares all of the
- 2     following:
- 3     (1) The state has a compelling interest in protecting the welfare
- 4     of its children.
- 5     (2) Under Section 13 of Article V of the California Constitution,
- 6     the Attorney General has the duty and broad authority to ensure
- 7     that the laws of the state are uniformly and adequately enforced
- 8     for the protection of public rights and interests.
- 9     (3) The Attorney General is the chief law officer of the state and
- 10    head of the Department of Justice.
- 11    (4) The Attorney General possesses parens patriae standing to
- 12    bring legal actions for violations of any laws that affect the health
- 13    and welfare of the state's citizens.
- 14    (5) Absent a legislative restriction, the Attorney General may
- 15    file any civil action or proceeding directly involving the rights and
- 16    interests of the state, or which is deemed necessary for the
- 17    enforcement of the laws of the state, the preservation of order, and
- 18    the protection of public rights and interests.

1     (6) *The Bureau of Children’s Justice is a section within the*  
2 *Department of Justice, created to ensure that state laws and*  
3 *regulations enacted to protect children are consistently and*  
4 *effectively enforced.*

5     (7) *The mission of the Bureau of Children’s Justice is to protect*  
6 *the rights of children and focus the attention and resources of law*  
7 *enforcement and policymakers on the importance of safeguarding*  
8 *every child so they can meet their full potential.*

9     (8) *The Bureau of Children’s Justice utilizes the Department of*  
10 *Justice’s criminal and civil law enforcement powers to oversee*  
11 *and monitor laws that affect children, including education, civil*  
12 *rights, consumer protection, nonprofit charities, child welfare,*  
13 *privacy and identity fraud, and fraud.*

14     (9) *The Attorney General’s jurisdiction to enforce state laws*  
15 *relating to children is concurrent to and independent from the*  
16 *jurisdiction of other state agencies that oversee and monitor laws*  
17 *that affect the health, education, and welfare of the state’s children.*

18     (10) *The Family Educational Rights and Privacy Act (20 U.S.C.*  
19 *Sec. 1232g) is a federal law that protects the privacy of pupil*  
20 *educational records.*

21     (11) *The United States Department of Education has*  
22 *implemented regulations pursuant to the federal Family*  
23 *Educational Rights and Privacy Act. Section 99.31(a)(9) of Title*  
24 *34 of the Code of Federal Regulations sets forth conditions when*  
25 *disclosure to comply with a judicial order or lawfully issued*  
26 *subpoena is required but does not require an educational agency*  
27 *or institution to make a reasonable effort to notify the parent or*  
28 *eligible pupil of the order or subpoena in advance of compliance*  
29 *where the disclosure is in compliance with (A) a federal grand*  
30 *jury subpoena and the court has ordered that the existence or the*  
31 *contents of the subpoena or the information furnished in response*  
32 *to the subpoena not be disclosed or (B) any other subpoena issued*  
33 *for a law enforcement purpose and the court or other issuing*  
34 *agency has ordered that the existence or the contents of the*  
35 *subpoena or the information furnished in response to the subpoena*  
36 *not be disclosed.*

37     (12) *Article 5 (commencing with Section 49073) of Chapter 6.5*  
38 *of Part 27 of Division 4 of Title 2 of the Education Code provides*  
39 *for the privacy protection of pupil records.*

(13) Section 49077 of the Education Code sets forth conditions for disclosure of pupil information in compliance with a court order or lawfully issued subpoena and requires a school district to make a reasonable effort to notify the parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

(14) The conditions for disclosure of pupil information in compliance with a lawfully issued subpoena set forth in the Education Code are not consistent with the federal Family Educational Rights and Privacy Act and its implementing regulations.

(b) Therefore, it is the intent of the Legislature to amend California state law to be consistent with federal law and regulations and the above findings and declarations.

SEC. 2. Section 49077 of the Education Code is amended to read:

49077. (a) Information concerning a ~~student~~ pupil shall be furnished in compliance with a court order or a lawfully issued subpoena. The ~~school district~~ educational agency or institution shall make a reasonable effort to notify the parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

(b) Consistent with Section 99.31(a)(9)(ii) of Title 34 of the Code of Federal Regulations, the notification required pursuant to subdivision (a) shall not apply if the disclosure is in compliance with either of the following:

(1) A subpoena issued by a grand jury and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(2) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

1     ~~SECTION 1. Section 827 of the Welfare and Institutions Code~~  
2     ~~is amended to read:~~

3     ~~827. (a) (1) Except as provided in Section 828, a case file~~  
4     ~~may be inspected only by the following:~~

5     ~~(A) Court personnel.~~

6     ~~(B) The district attorney, a city attorney, or city prosecutor~~  
7     ~~authorized to prosecute criminal or juvenile cases under California~~  
8     ~~law.~~

9     ~~(C) The minor who is the subject of the proceeding.~~

10    ~~(D) The minor's parents or guardian.~~

11    ~~(E) The attorneys for the parties, judges, referees, other hearing~~  
12    ~~officers, probation officers, and law enforcement officers who are~~  
13    ~~actively participating in criminal or juvenile proceedings involving~~  
14    ~~the minor.~~

15    ~~(F) The county counsel, city attorney, or any other attorney~~  
16    ~~representing the petitioning agency in a dependency action.~~

17    ~~(G) The superintendent or designee of the school district where~~  
18    ~~the minor is enrolled or attending school.~~

19    ~~(H) Members of the child protective agencies referred to in~~  
20    ~~Section 11165.9 of the Penal Code.~~

21    ~~(I) The State Department of Social Services, to carry out its~~  
22    ~~duties pursuant to Division 9 (commencing with Section 10000),~~  
23    ~~and Part 5 (commencing with Section 7900) of Division 12 of the~~  
24    ~~Family Code to oversee and monitor county child welfare agencies,~~  
25    ~~children in foster care or receiving foster care assistance, and~~  
26    ~~out-of-state placements, Section 10850.4, and paragraph (2).~~

27    ~~(J) Authorized legal staff or special investigators who are peace~~  
28    ~~officers who are employed by, or who are authorized~~  
29    ~~representatives of, the State Department of Social Services, as~~  
30    ~~necessary to the performance of their duties to inspect, license,~~  
31    ~~and investigate community care facilities, and to ensure that the~~  
32    ~~standards of care and services provided in those facilities are~~  
33    ~~adequate and appropriate and to ascertain compliance with the~~  
34    ~~rules and regulations to which the facilities are subject. The~~  
35    ~~confidential information shall remain confidential except for~~  
36    ~~purposes of inspection, licensing, or investigation pursuant to~~  
37    ~~Chapter 3 (commencing with Section 1500) and Chapter 3.4~~  
38    ~~(commencing with Section 1596.70) of Division 2 of the Health~~  
39    ~~and Safety Code, or a criminal, civil, or administrative proceeding~~  
40    ~~in relation thereto. The confidential information may be used by~~

1 the State Department of Social Services in a criminal, civil, or  
2 administrative proceeding. The confidential information shall be  
3 available only to the judge or hearing officer and to the parties to  
4 the case. Names that are confidential shall be listed in attachments  
5 separate to the general pleadings. The confidential information  
6 shall be sealed after the conclusion of the criminal, civil, or  
7 administrative hearings, and may not subsequently be released  
8 except in accordance with this subdivision. If the confidential  
9 information does not result in a criminal, civil, or administrative  
10 proceeding, it shall be sealed after the State Department of Social  
11 Services decides that no further action will be taken in the matter  
12 of suspected licensing violations. Except as otherwise provided in  
13 this subdivision, confidential information in the possession of the  
14 State Department of Social Services shall not contain the name of  
15 the minor.

16 (K) Members of children's multidisciplinary teams, persons, or  
17 agencies providing treatment or supervision of the minor.

18 (L) A judge, commissioner, or other hearing officer assigned  
19 to a family law case with issues concerning custody or visitation,  
20 or both, involving the minor, and the following persons, if actively  
21 participating in the family law case: a family court mediator  
22 assigned to a case involving the minor pursuant to Article 1  
23 (commencing with Section 3160) of Chapter 11 of Part 2 of  
24 Division 8 of the Family Code, a court-appointed evaluator or a  
25 person conducting a court-connected child custody evaluation,  
26 investigation, or assessment pursuant to Section 3111 or 3118 of  
27 the Family Code, and counsel appointed for the minor in the family  
28 law case pursuant to Section 3150 of the Family Code. Prior to  
29 allowing counsel appointed for the minor in the family law case  
30 to inspect the file, the court clerk may require counsel to provide  
31 a certified copy of the court order appointing him or her as the  
32 minor's counsel.

33 (M) A court-appointed investigator who is actively participating  
34 in a guardianship case involving a minor pursuant to Part 2  
35 (commencing with Section 1500) of Division 4 of the Probate  
36 Code and acting within the scope of his or her duties in that case.

37 (N) A local child support agency for the purpose of establishing  
38 paternity and establishing and enforcing child support orders.

1     ~~(O) Juvenile justice commissions as established under Section~~  
2     ~~225. The confidentiality provisions of Section 10850 shall apply~~  
3     ~~to a juvenile justice commission and its members.~~

4     ~~(P) Any other person who may be designated by court order of~~  
5     ~~the judge of the juvenile court upon filing a petition.~~

6     ~~(2) (A) Notwithstanding any other law and subject to~~  
7     ~~subparagraph (A) of paragraph (3), juvenile case files, except those~~  
8     ~~relating to matters within the jurisdiction of the court pursuant to~~  
9     ~~Section 601 or 602, that pertain to a deceased child who was within~~  
10    ~~the jurisdiction of the juvenile court pursuant to Section 300, shall~~  
11    ~~be released to the public pursuant to an order by the juvenile court~~  
12    ~~after a petition has been filed and interested parties have been~~  
13    ~~afforded an opportunity to file an objection. Any information~~  
14    ~~relating to another child or which could identify another child,~~  
15    ~~except for information about the deceased, shall be redacted from~~  
16    ~~the juvenile case file prior to release, unless a specific order is~~  
17    ~~made by the juvenile court to the contrary. Except as provided in~~  
18    ~~this paragraph, the presiding judge of the juvenile court may issue~~  
19    ~~an order prohibiting or limiting access to the juvenile case file, or~~  
20    ~~any portion thereof, of a deceased child only upon a showing by~~  
21    ~~a preponderance of evidence that release of the juvenile case file~~  
22    ~~or any portion thereof is detrimental to the safety, protection, or~~  
23    ~~physical or emotional well-being of another child who is directly~~  
24    ~~or indirectly connected to the juvenile case that is the subject of~~  
25    ~~the petition.~~

26    ~~(B) This paragraph represents a presumption in favor of the~~  
27    ~~release of documents when a child is deceased unless the statutory~~  
28    ~~reasons for confidentiality are shown to exist.~~

29    ~~(C) If a child whose records are sought has died, and documents~~  
30    ~~are sought pursuant to this paragraph, no weighing or balancing~~  
31    ~~of the interests of those other than a child is permitted.~~

32    ~~(D) A petition filed under this paragraph shall be served on~~  
33    ~~interested parties by the petitioner, if the petitioner is in possession~~  
34    ~~of their identity and address, and on the custodian of records. Upon~~  
35    ~~receiving a petition, the custodian of records shall serve a copy of~~  
36    ~~the request upon all interested parties that have not been served~~  
37    ~~by the petitioner or on the interested parties served by the petitioner~~  
38    ~~if the custodian of records possesses information, such as a more~~  
39    ~~recent address, indicating that the service by the petitioner may~~  
40    ~~have been ineffective.~~

1     ~~(E) The custodian of records shall serve the petition within 10~~  
2     ~~calendar days of receipt. If any interested party, including the~~  
3     ~~custodian of records, objects to the petition, the party shall file and~~  
4     ~~serve the objection on the petitioning party no later than 15~~  
5     ~~calendar days of service of the petition.~~

6     ~~(F) The petitioning party shall have 10 calendar days to file any~~  
7     ~~reply. The juvenile court shall set the matter for hearing no more~~  
8     ~~than 60 calendar days from the date the petition is served on the~~  
9     ~~custodian of records. The court shall render its decision within 30~~  
10    ~~days of the hearing. The matter shall be decided solely upon the~~  
11    ~~basis of the petition and supporting exhibits and declarations, if~~  
12    ~~any, the objection and any supporting exhibits or declarations, if~~  
13    ~~any, and the reply and any supporting declarations or exhibits~~  
14    ~~thereto, and argument at hearing. The court may solely upon its~~  
15    ~~own motion order the appearance of witnesses. If no objection is~~  
16    ~~filed to the petition, the court shall review the petition and issue~~  
17    ~~its decision within 10 calendar days of the final day for filing the~~  
18    ~~objection. Any order of the court shall be immediately reviewable~~  
19    ~~by petition to the appellate court for the issuance of an~~  
20    ~~extraordinary writ.~~

21    ~~(3) Access to juvenile case files pertaining to matters within the~~  
22    ~~jurisdiction of the juvenile court pursuant to Section 300 shall be~~  
23    ~~limited as follows:~~

24    ~~(A) If a juvenile case file, or any portion thereof, is privileged~~  
25    ~~or confidential pursuant to any other state law or federal law or~~  
26    ~~regulation, the requirements of that state law or federal law or~~  
27    ~~regulation prohibiting or limiting release of the juvenile case file~~  
28    ~~or any portions thereof shall prevail. Unless a person is listed in~~  
29    ~~subparagraphs (A) to (O), inclusive, of paragraph (1) and is entitled~~  
30    ~~to access under the other state law or federal law or regulation~~  
31    ~~without a court order, all those seeking access, pursuant to other~~  
32    ~~authorization, to portions of, or information relating to the contents~~  
33    ~~of, juvenile case files protected under another state law or federal~~  
34    ~~law or regulation, shall petition the juvenile court. The juvenile~~  
35    ~~court may only release the portion of, or information relating to~~  
36    ~~the contents of, juvenile case files protected by another state law~~  
37    ~~or federal law or regulation if disclosure is not detrimental to the~~  
38    ~~safety, protection, or physical or emotional well-being of a child~~  
39    ~~who is directly or indirectly connected to the juvenile case that is~~  
40    ~~the subject of the petition. This paragraph shall not be construed~~



1 to limit the ability of the juvenile court to carry out its duties in  
2 conducting juvenile court proceedings.

3 (B) Prior to the release of the juvenile case file or any portion  
4 thereof, the court shall afford due process, including a notice of  
5 and an opportunity to file an objection to the release of the record  
6 or report to all interested parties.

7 (4) A juvenile case file, any portion thereof, and information  
8 relating to the content of the juvenile case file, may not be  
9 disseminated by the receiving agencies to any persons or agencies;  
10 other than those persons or agencies authorized to receive  
11 documents pursuant to this section. Further, a juvenile case file,  
12 any portion thereof, and information relating to the content of the  
13 juvenile case file, may not be made as an attachment to any other  
14 documents without the prior approval of the presiding judge of the  
15 juvenile court, unless it is used in connection with and in the course  
16 of a criminal investigation or a proceeding brought to declare a  
17 person a dependent child or ward of the juvenile court.

18 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E),  
19 (F), (H), and (I) of paragraph (1) may also receive copies of the  
20 case file. In these circumstances, the requirements of paragraph  
21 (4) shall continue to apply to the information received.

22 (b) (1) While the Legislature reaffirms its belief that juvenile  
23 court records, in general, should be confidential, it is the intent of  
24 the Legislature in enacting this subdivision to provide for a limited  
25 exception to juvenile court record confidentiality to promote more  
26 effective communication among juvenile courts, family courts,  
27 law enforcement agencies, and schools to ensure the rehabilitation  
28 of juvenile criminal offenders as well as to lessen the potential for  
29 drug use, violence, other forms of delinquency, and child abuse.

30 (2) (A) Notwithstanding subdivision (a), written notice that a  
31 minor enrolled in a public school, kindergarten to grade 12,  
32 inclusive, has been found by a court of competent jurisdiction to  
33 have committed any felony or any misdemeanor involving curfew,  
34 gambling, alcohol, drugs, tobacco products, carrying of weapons,  
35 a sex offense listed in Section 290 of the Penal Code, assault or  
36 battery, larceny, vandalism, or graffiti shall be provided by the  
37 court, within seven days, to the superintendent of the school district  
38 of attendance. Written notice shall include only the offense found  
39 to have been committed by the minor and the disposition of the  
40 minor's case. This notice shall be expeditiously transmitted by the

1 district superintendent to the principal at the school of attendance.  
2 The principal shall expeditiously disseminate the information to  
3 those counselors directly supervising or reporting on the behavior  
4 or progress of the minor. In addition, the principal shall disseminate  
5 the information to any teacher or administrator directly supervising  
6 or reporting on the behavior or progress of the minor whom the  
7 principal believes needs the information to work with the pupil in  
8 an appropriate fashion, to avoid being needlessly vulnerable or to  
9 protect other persons from needless vulnerability.

10 (B) Any information received by a teacher, counselor, or  
11 administrator under this subdivision shall be received in confidence  
12 for the limited purpose of rehabilitating the minor and protecting  
13 students and staff, and shall not be further disseminated by the  
14 teacher, counselor, or administrator, except insofar as  
15 communication with the juvenile, his or her parents or guardians,  
16 law enforcement personnel, and the juvenile's probation officer  
17 is necessary to effectuate the juvenile's rehabilitation or to protect  
18 students and staff.

19 An

20 (C) An intentional violation of the confidentiality provisions of  
21 this paragraph is a misdemeanor punishable by a fine not to exceed  
22 five hundred dollars (\$500).

23 (3) If a minor is removed from public school as a result of the  
24 court's finding described in subdivision (b), the superintendent  
25 shall maintain the information in a confidential file and shall defer  
26 transmittal of the information received from the court until the  
27 minor is returned to public school. If the minor is returned to a  
28 school district other than the one from which the minor came, the  
29 parole or probation officer having jurisdiction over the minor shall  
30 so notify the superintendent of the last district of attendance, who  
31 shall transmit the notice received from the court to the  
32 superintendent of the new district of attendance.

33 (e) Each probation report filed with the court concerning a minor  
34 whose record is subject to dissemination pursuant to subdivision  
35 (b) shall include on the face sheet the school at which the minor  
36 is currently enrolled. The county superintendent shall provide the  
37 court with a listing of all of the schools within each school district,  
38 within the county, along with the name and mailing address of  
39 each district superintendent.

~~(d) (1) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18 years, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.~~

~~(2) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).~~

~~(e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.~~

~~(f) The persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe.~~